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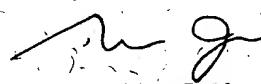
Re: Application Serial No.: 09/439,718  
Confirmation No.: 2011  
Appellant: Jeffery M. Enright  
Title: Cash Dispensing Method for Self-Service Facility  
such as Motor Fuel Dispensing Facility  
Docket No.: D-1113

Sir:

Please find enclosed the Appeal Brief of Appellants pursuant to 37 C.F.R. § 41.37 for filing in the above-referenced application. Please charge the fee for this filing (\$500) and any other fee due to Deposit Account 09-0428.

The Appeal Brief is being filed under protest for the reasons set forth in the Petition dated June 23, 2004. Accordingly, also enclosed is a Request for a refund.

Very truly yours,



Ralph E. Jocke  
Reg. No. 31,029

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01-03-205

D-1113

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**SUPPLEMENTAL BRIEF OF APPELLANT  
PURSUANT TO 37 C.F.R. § 41.37**

Sir:

The Appellant hereby submits the Supplemental Appeal Brief pursuant to 37 C.F.R. § 41.37 concerning the above-referenced Application. This Supplemental Appeal Brief is in response to the Office Action dated June 9, 2004. Appellant respectfully requests reinstatement of the appeal.

(i)

**REAL PARTY IN INTEREST**

The Assignee of all right, title and interest to the above-referenced Application is Diebold, Incorporated, an Ohio corporation.

(ii)

## **RELATED APPEALS AND INTERFERENCES**

In this application a Board decision regarding Appeal No. 2003-0990 was previously rendered on April 7, 2004. In said decision the Examiner was reversed on all issues.

Appellant, Appellant's legal representative, and assignee believe that there are no other related appeals or interferences pertaining to this matter.

(iii)

### **STATUS OF CLAIMS**

Claims 1-43 are pending in the Application.

Claims rejected: 1-43

Claims allowed: none

Claims confirmed: none

Claims withdrawn: none

Claim objected to: none

Claims canceled: none

Appellant appeals the rejections of claims 1-43, inclusive. These rejections were the only rejections present in the Office Action (“Action”) dated June 9, 2004.

(iv)

## **STATUS OF AMENDMENTS**

The non-final Action dated June 9, 2004 followed a Board decision in Appeal No. 2003-0990. The Board decision completely reversed the Examiner. Appellant filed a petition on June 23, 2004 against the Action's impermissible attempt to reopen prosecution after a Board decision. As of this writing, the Office had not yet acted on the petition.

No final rejection has been made. Therefore, no amendments to the claims were requested to be admitted after a final rejection.

(v)

## **SUMMARY OF CLAIMED SUBJECT MATTER**

*Concise explanations of exemplary forms of the claimed invention:*

### With respect to independent claim 1

An exemplary form of the invention is directed to a method. The method includes paying a charge for merchandise (e.g., fuel) delivered to a user at a self-service dispensing machine (12; Figure 1; page 13, lines 12-17). The paying can include reading a machine readable article (80; e.g., credit card) corresponding to a source (44) of monetary value (page 18, line 16 to page 19, line 10). The method further includes receiving an input from the user through an input device (52; page 16, lines 8-10) adjacent the dispensing machine (12). The input corresponds to a request for an amount of cash (page 23, lines 4-9 and 19-21). The method additionally includes charging the source (44) of monetary value for the merchandise charge and the requested amount of cash (page 25, lines 5-11). The method also includes communicating (page 24, lines 9-10) information representative of the requested cash amount to a facility (14) remote from the machine (12). The facility (14) includes a supply of cash (28, 20; e.g., an ATM; Figure 1). The method further includes delivering the amount of cash to the user from the cash supply after the user arrives at the facility (14) (page 27, lines 9-14).

### With respect to independent claim 38

Another exemplary form of the invention is directed to a method. Support in the disclosure for like reference numerals has previously been provided. The method includes paying for a first charge for merchandise (e.g., fuel) delivered to a user at a first self-service

dispensing machine (116; Figure 25). The paying includes accepting cash with a cash accepting device (152; Figure 33) (page 37, lines 17-22). An amount of change corresponds to the difference between the first charge and the amount of cash (page 38, lines 8-14). The method further includes generating a code (page 38, lines 15-18) which corresponds to an amount of change. The method additionally includes outputting the code to the user (page 39, line 21 to page 40 line 7). The method also includes paying for a second charge for merchandise delivered to the user at a second self service dispensing machine (page 41, lines 10-17). The paying includes inputting the code and reducing the second charge by the amount of change that corresponds to the code (page 42, lines 5-9).

With respect to independent claim 40

Another exemplary form of the invention is directed to a method. Support in the disclosure for like reference numerals has previously been provided. The method comprises receiving a first customer request at a customer request station (212; Figures 38-39) (page 52, lines 8-13). The first request is received via at least one input device (226, 228, 230, 234) at the customer request station. The first request corresponds to a merchandise purchase (Figure 43). The method further includes receiving a second customer request at the customer request station (212). The second request is received via at least one input device (242, 246, 248) at the customer request station (Figure 39). The second request corresponds to an amount of cash (page 57, lines 1-3 and 11-12) (Figure 44). The method additionally includes providing a code at the customer request station (page 58, lines 1-16) (Figure 45). The code is provided responsive to the second request (page 58, lines 8-11; page 59, lines 19-22). The method also includes

receiving a single payment at the customer request station for both the merchandise and the amount of cash (242; page 59, lines 8-10; Figure 42). The payment includes reading (230) a machine readable article (80; e.g., credit card). The method further includes delivering at least a portion of the requested amount of cash from a cash dispensing device (218) at a cash delivery station (216) responsive to receiving input of the code at an input device (e.g., keypad) at the cash delivery station (page 59, lines 2-7). The cash delivery station (216) is remote from the customer request station (212) (Figure 38). The cash delivery is subsequent to customer arrival at the cash delivery station (page 59, lines 4-7).

**(vi) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Additional Comment

The aforementioned petition required the Office to strike from the record the mentioning (in the Action dated June 9, 2004) of the impermissible newly cited reference. To likewise avoid direct naming the "new reference", it shall be referred to herein simply as "NR".

The questions presented in this appeal are:

- 1). Whether Appellant's claims 38-39 are unpatentable under 35 U.S.C. § 102(e) as being anticipated by NR.
- 2). Whether Appellant's claims 1-37 and 40-43 are unpatentable pursuant to 35 U.S.C. § 103(a) over Phillips, et al. (US 6,193,154) in view of NR.

(vii)

## ARGUMENT

Appellant's Appeal Brief filed July 29, 2002 and Reply Brief filed January 3, 2003 are herein incorporated by reference.

### The 35 U.S.C. § 102(b) Rejections

#### The Applicable Legal Standards

Anticipation pursuant to 35 U.S.C. § 102 requires that a single prior art reference contain all the elements of the claimed invention arranged in the manner recited in the claim. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

Anticipation under 35 U.S.C. § 102 requires in a single prior art disclosure, each and every element of the claimed invention arranged in a manner such that the reference would literally infringe the claims at issue if made later in time. *Lewmar Marine, Inc. v. Bariant, Inc.*, 827 F.2d 744, 747, 3 USPQ2d 1766, 1768 (Fed. Cir. 1987).

Anticipation by inherency requires that the Patent Office establish that persons skilled in the art would recognize that the missing element is necessarily present in the reference. To establish inherency the Office must prove through citation to prior art that the feature alleged to be inherent is "necessarily present" in a cited reference. Inherency may not be established based on probabilities or possibilities. It is plainly improper to reject a claim on the basis of 35 U.S.C. § 102 based merely on the possibility that a particular prior art disclosure could or might be used or operated in the manner recited in the claim. *In re Robertson*, 169 F.3d 743, 49 USPQ2d 1949 (Fed. Cir. 1999).

It is respectfully submitted that the Action from which this appeal is taken does not meet these burdens.

**NR does not anticipate the claims**

Claims 38-39 were rejected under 35 U.S.C. § 102(e) as being anticipated by NR. These rejections are respectfully traversed.

The Action alleges that NR teaches a "code" being the name of the user (or other identifying indicia) on a money order being bought with the change from a purchase at a first machine, with said money order with code being input to a second machine to buy something for a price greater than that of the change/money order amount. The Appellant respectfully disagrees with the interpretation and application of the NR reference. NR does not *teach* the features and relationships attributed thereto by the Office.

**Claim 38**

Claim 38 recites a method. Claim 38 recites a "code" that "corresponds to an amount of *change*" (step b) and "the amount of *change*" "corresponds to the code" (step d). Appellant's Specification properly discusses "code." The allegation in the rejection that the "code" can be the "name" of a user on a money order is without merit. As evidenced by the prior Board decision, even the Board understands the meaning of "code."

Where does NR teach change being credited as a money order, as alleged? Contrarily, change due in NR is credited to a smart card or deposited into a bank account (col. 23, lines 3-14; Figure 23; col. 5, lines 35-41).

Where does NR teach using a money order to pay for a purchase, as alleged? It does not. Rather, payment for a purchase in NR is made by using cash, a credit card, a smart card, or an account withdrawal (col. 22, lines 2-5; Figures 21A and 21C).

The reasoning of the Examiner (along with the alleged teaching of NR) at best smacks of attempted "obviousness." Regardless, the Examiner has not established a *prima facie* case of *anticipation*. NR does not anticipate claim 38.

### **Claim 39**

Claim 39 depends from claim 38. NR further does not teach indicia representative of a code corresponding to an amount of change from paying for a first charge. Nor does NR teach reading the indica in paying for a second charge. NR does not anticipate claim 39.

## **The 35 U.S.C. § 103 (a) Rejections**

### The Applicable Legal Standards

Before a claim may be rejected on the basis of obviousness pursuant to 35 U.S.C. § 103, the Patent Office bears the burden of establishing that all the recited features of the claim are known in the prior art. This is known as *prima facie* obviousness. To establish *prima facie* obviousness, it must be shown that all the elements and relationships recited in the claim are known in the prior art. If the Office does not produce a *prima facie* case, then the Appellant is under no obligation to submit evidence of nonobviousness. MPEP § 2142 (Eighth Edition, August 2001; Rev. 2, May 2004).

The teaching, suggestion, or motivation to combine the features in prior art references must be clearly and particularly identified in such prior art to support a rejection on the basis of obviousness. It is not sufficient to offer a broad range of sources and make conclusory statements. *In re Dembicza*k, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

Even if all of the features recited in the claim are known in the prior art, it is still not proper to reject a claim on the basis of obviousness unless there is a specific teaching, suggestion, or motivation in the prior art to produce the claimed combination. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568, 1 USPQ2d 1593 (Fed. Cir. 1987). *In re Newell*, 891 F.2d 899, 901, 902, 13 USPQ2d 1248, 1250 (Fed. Cir. 1989).

The evidence of record must teach or suggest the recited features. An assertion of basic knowledge and common sense not based on any evidence in the record lacks substantial evidence support. *In re Zurko*, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001).

A determination of patentability must be based on evidence of record. *In re Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002).

It is respectfully submitted that the Action from which this appeal is taken does not meet these burdens.

**The Claims Are Not Obvious Over  
Phillips in view of NR**

In the Action claims 1-37 and 40-43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Phillips in view of NR. These rejections are respectfully traversed.

**Claim 1**

Phillips teaches locating a vending machine (3) on a fuel island (col. 2, line 62 to col. 3, line 7; Figure 3) of a vehicle fueling *facility* (col. 1, lines 8-13; col. 1, line 66 to col. 2, line 5) so that the vending machine is usable in conjunction with a credit card accepting self-service fuel dispensing gasoline pump (1). Having the vending machine next to the fuel pump advantageously permits a customer to use a purchased good while pumping gas (col. 26, lines 46-49). Even the Action (at page 3, lines 5-6) indicates that Phillips desires to vend goods at the fuel island. The Action admits that Phillips does not teach requesting an amount of cash by a user at the fuel island, nor delivering the requested amount of cash to the user at a facility remote from the fuel island. The references provide no teaching, suggestion, or motivation for providing in Phillips the delivery of cash to the user at a facility remote from the fuel island.

The Action alleges that NR teaches "wire transfer and money order second goods, either of which represents an amount of cash that is delivered to the user at a facility remote from the

machine." The Appellant respectfully disagrees. NR cannot alleviate the admitted and noted deficiencies of Phillips as it does not teach or suggest the recited features which are not found in Phillips. NR is non analogous to Phillips' fuel dispensing.

Where does NR charge a source of monetary value for merchandise (delivered to a user at a self-service dispensing machine) and a requested amount of cash (delivered to the user away from the machine)? Where does NR teach or suggest that cash requested by a user at a machine is delivered to the *same* user after the user arrives at a facility *remote* from the machine? It should be understood that the claim refers to a remote *facility*. Contrarily, in NR a money order purchased at a machine is received at the *same* machine, not at a remote facility. Nor does NR teach or suggest receiving a cash request input adjacent a *fuel pump* and delivering the requested cash at a facility remote from the fuel pump. Thus, NR does not teach or suggest a link between Phillips' fuel island and a cash delivering facility remote from Phillips' vehicle fueling facility.

Regardless, Phillips specifically teaches having goods delivered *at* the fuel island of the vehicle fueling *facility*, as previously discussed. That is, Phillips teaches away from having goods delivered at a *facility remote* from the vehicle fueling *facility*. An obviousness rejection cannot be based on a combination of features if making the combination would result in destroying the utility or advantage of the device shown in the prior art reference. Note *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1598-99 (Fed. Cir. 1988). Therefore, it would not have been obvious to have modified Phillips as alleged (in direct conflict with Phillips' teaching) to have produced Appellant's recited invention.

The attempts to modify Phillips are clearly attempts at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible and does not constitute a valid

basis for a finding of obviousness. *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992). The rejection, which lacks the necessary evidence and rationale, is based on knowledge gleaned only from Appellant's disclosure.

The references, taken alone or in combination, do not teach or suggest the recited features, relationships, and steps. The Office has not established a *prima facie* showing of obviousness.

#### **Claim 2**

Claim 2 depends from claim 1. Neither Phillips nor NR, taken alone or in combination, discloses or suggests reducing the amount of cash delivered to a user at a remote facility by the cost associated with other merchandise in the manner recited. Nor would it have been obvious to one having ordinary skill in the art to have modified Phillips with the teachings of NR to have produced the claimed invention. The Office has not established a *prima facie* showing of obviousness.

#### **Claim 3**

Neither of the applied references, taken alone or in combination, discloses or suggests receiving payment of merchandise cost from the user in cash at the remote facility in the manner recited. Thus, it would not have been obvious to one having ordinary skill in the art to have modified Phillips with the teachings of NR to have produced the claimed invention.

#### **Claim 4**

Neither Phillips nor NR, taken alone or in combination, discloses or suggests receiving an item from the user at the facility in exchange for the amount of cash in the manner recited. Nor has the Office established a *prima facie* showing of obviousness.

### **Claim 5**

Claim 5 depends from claim 4/1. Neither Phillips nor NR, taken alone or in combination, discloses or suggests receiving a printed item from the user at the facility in exchange for the amount of cash. Nor would it have been obvious to one having ordinary skill in the art to have modified Phillips with the teachings of NR to have produced the claimed invention.

### **Claim 6**

Claim 6 depends from claim 4/1. Neither of the applied references, taken alone or in combination, discloses or suggests reading machine readable indicia with a reading device at a facility (remote from the dispensing machine). The Office has not established *prima facie* obviousness.

### **Claim 7**

Claim 7 depends from claim 6/4/1. Neither Phillips nor NR, taken alone or in combination, discloses or suggests dispensing an amount of cash from a cash dispensing mechanism responsive to reading an item with a reading device at a facility (remote from the machine). It follows that the Office has not made a *prima facie* showing of obviousness.

### **Claim 8**

Claim 8 depends from claim 7/6/4/1. Neither of the applied references, taken alone or in combination, discloses or suggests a supply having a separate portion, and loading cash from the separate portion to the cash dispensing mechanism. Nor would it have been obvious to one having ordinary skill in the art to have modified Phillips with the teachings of NR to have produced the claimed invention. The Office has not established *prima facie* obviousness.

**Claim 9**

Neither Phillips nor NR, taken alone or in combination, discloses or suggests communicating information representative of a cash request to a facility remote from the machine, including providing a visual indication through an output device that the user has requested the amount. The Office has not established a *prima facie* showing of obviousness.

**Claim 10**

Neither of the applied references, taken alone or in combination, discloses or suggests a total being equal to the charge and the requested amount in the manner recited. Nor would it have been obvious to have modified Phillips with the teachings of NR to have produced the claimed invention.

**Claim 11**

Claim 11 depends from claim 10/1. Neither Phillips nor NR, taken alone or in combination, discloses or suggests using a communications network in the manner recited. It follows that the Office has not presented a *prima facie* showing of obviousness.

**Claim 12**

Neither of the applied references, taken alone or in combination, discloses or suggests paying a charge for motor fuel in the manner recited. The Office has not established a *prima facie* showing of obviousness.

**Claim 13**

Neither Phillips nor NR, taken alone or in combination, discloses or suggests a machine readable article including a credit card in the manner recited. Nor do the references teach or suggest charging a source of monetary value for both a merchandise charge and a requested

amount of cash, where the article corresponds to the source of monetary value. Nor would it have been obvious to have modified Phillips with the teachings of NR to have produced the claimed invention.

**Claim 14**

Neither Phillips nor NR, taken alone or in combination, discloses or suggests a machine readable article including a debit card in the manner recited. Nor do the references teach or suggest charging a source of monetary value for both a merchandise charge and a requested amount of cash, where the article corresponds to the source of monetary value. Nor would it have been obvious to have modified Phillips as alleged to have produced the claimed invention.

**Claim 15**

Neither Phillips nor NR, taken alone or in combination, discloses or suggests a machine readable article including a stored value card in the manner recited. The references do not teach or suggest charging a source of monetary value for both a merchandise charge and a requested amount of cash, where the article corresponds to the source of monetary value. Nor would it have been obvious to have modified Phillips as alleged to have produced the recited invention.

**Claim 16**

Claim 16 depends from claim 15/1. The applied references, taken alone or in combination, do not disclose or suggest modifying data stored in the stored value memory of a stored value card in the manner recited. The Office has not established a *prima facie* showing of obviousness. It would not have been obvious to one having ordinary skill in the art to have modified Phillips as alleged to have produced the recited method.

### **Claim 17**

Claim 17 depends from claim 15/1. Neither Phillips nor NR, taken alone or in combination, discloses or suggests loading data representative of a further amount of monetary value to the stored value card, and charging the further amount to the source of the monetary value in the manner recited. The Office has not presented a *prima facie* showing of obviousness.

### **Claim 18**

Neither of the references, taken alone or in combination, discloses or suggests delivering an amount of cash to a user responsive to the user delivering an item (delivered to the user at the dispensing machine in response to a cash request) to the facility. It follows that it would not have been obvious to have modified Phillips with the teachings of NR to have produced the claimed invention.

### **Claim 19**

Claim 19 depends from claim 18/1. Neither Phillips nor NR, taken alone or in combination, discloses or suggests delivering an amount of cash to a user responsive to the user delivering a printed document (delivered to the user at the dispensing machine in response to a cash request) to the facility. Nor has the Office established a *prima facie* showing of obviousness.

### **Claim 20**

Neither of the references, taken alone or in combination, discloses or suggests receiving an input corresponding to a request for an amount of cash, wherein the input corresponds to the user touching at least one key in the manner recited. Again, the Office has not established a *prima facie* showing of obviousness.

### **Claim 21**

Claim 21 depends from claim 20/1. Neither Phillips nor NR, taken alone or in combination, discloses or suggests a prompt message advising a user to press at least one of the keys if they wish to receive an amount of cash. Nor does either reference disclose or suggest delivering the amount of cash to the user after the user arrives at a remote facility. Nor it would it have been obvious to have modified Phillips with the teachings of NR to have produced the claimed invention.

### **Claim 22**

Neither of the applied references, taken alone or in combination, discloses or suggests delivering the cash to a user after the user arrives at a facility remote from the dispensing machine. It follows that neither reference discloses nor suggests reviewing identification associated with the user at the facility prior to delivering the cash. The Office has not established a *prima facie* showing of obviousness.

### **Claim 23**

Claim 23 depends from claim 22/1. Neither Phillips nor NR, taken alone or in combination, discloses or suggests reviewing the machine readable article (used in step a), reviewing a driver's license associated with the user, or receiving a biometric input from the user. Again, the Office has not established a *prima facie* showing of obviousness.

### **Claim 24**

Neither of the applied references, taken alone or in combination, discloses or suggests delivering cash (which was requested adjacent a motor fuel dispensing machine) to a user in an indoor sales area remote from the motor fuel dispensing machine. The Action admits (at page 3,

numbered paragraph 10) that neither of the references teaches or suggests that the amount is delivered in a sales area. Thus, the record lacks substantial evidence support. *In re Zurko*, supra. It follows that it would not have been obvious to have modified Phillips with the teachings of NR to have produced the claimed invention.

**Claim 25**

Neither Phillips nor NR, taken alone or in combination, discloses or suggests delivering cash (which was requested adjacent a motor fuel dispensing machine) to a user through a facility service window remote from the motor fuel dispensing machine. The Action admits (at page 3, numbered paragraph 10) that neither of the references teaches or suggests that the amount is delivered through a service window. Thus, the record lacks substantial evidence support. *In re Zurko*, supra. It follows that it would not have been obvious to have modified Phillips with the teachings of NR to have produced the claimed invention.

**Claim 26**

Claim 26 depends from claim 25/1. Neither of the applied references, taken alone or in combination, discloses or suggests moving a vehicle from adjacent a motor fuel dispensing machine to adjacent a drive-up service window prior to delivering requested cash to the user. The Action admits (at page 3, numbered paragraph 10) that neither of the references teaches or suggests that the amount is delivered through a drive-up service window. Thus, the record lacks substantial evidence support. *In re Zurko*, supra. Again, the Office has not established a *prima facie* showing of obviousness.

**Claim 27**

Neither Phillips nor NR, taken alone or in combination, discloses or suggests an apparatus operating to perform the recited steps (a), (b), (c), (d), and (e). Thus, the Office has not established a *prima facie* showing of obviousness.

**Claim 28**

Neither Phillips nor NR, taken alone or in combination, discloses or suggests dispensing requested cash from a cash dispensing device at a remote facility responsive to reading (with a reading device) machine readable indicia (which was provided to the user adjacent a self-service dispensing machine responsive to a request for the cash amount). It follows that it would not have been obvious to have modified Phillips with the teachings of NR to have produced the claimed invention.

**Claim 29**

Claim 29 depends from claim 28/1. Neither Phillips nor NR, taken alone or in combination, discloses or suggests dispensing requested cash from a cash dispensing device at a remote facility responsive to reading (with a reading device) machine readable indicia printed on a paper item (which was provided to the user adjacent a self-service dispensing machine responsive to a request for the cash amount). Again, the Office has not established a *prima facie* showing of obviousness.

**Claim 30**

Neither Phillips nor NR discloses or suggests providing a user with a code at a self service dispensing machine responsive to a request for a cash amount. Neither Phillips nor NR discloses or suggests receiving input of the code through an input device at a facility remote from

the self service dispensing machine. It follows that neither Phillips nor NR, taken alone or in combination, discloses or suggests dispensing the requested cash from a cash dispensing device responsive to receiving input of the code through the input device. It further follows that the Office has not established a *prima facie* showing of obviousness.

### **Claim 31**

Claim 31 depends from claim 30/1. Furthermore, neither Phillips nor NR discloses or suggests providing a user with the code printed on a paper item at a self service dispensing machine responsive to a request for a cash amount, and dispensing the requested cash from a cash dispensing device responsive to receiving input of the code. Again, the Office has not established a *prima facie* showing of obviousness.

### **Claim 32**

Claim 32 depends from claim 30/1. Furthermore, neither Phillips nor NR discloses or suggests providing a user with the code printed on a receipt at a self service dispensing machine responsive to a request for a cash amount, and dispensing the requested cash from a cash dispensing device responsive to receiving input of the code. It follows that the Office has not established a *prima facie* showing of obviousness.

### **Claim 33**

Neither Phillips nor NR discloses or suggests receiving a further input corresponding to the user through a further input device adjacent a self-service dispensing machine. Neither Phillips nor NR discloses or suggests correlating through operation of a computer, data corresponding to the further input and the amount. Neither Phillips nor NR discloses or suggests receiving the further input through a remote input device at a remote facility. It follows that

neither Phillips nor NR, taken alone or in combination, discloses or suggests dispensing the amount of cash from a cash dispensing device responsive to receipt of the further input through the remote input device. It further follows that it would not have been obvious to have modified Phillips with the teachings of NR to have produced the claimed invention.

**Claim 34**

Claim 34 depends from claim 33/1. Furthermore, neither Phillips nor NR discloses or suggests that the further input includes a user selected code in the manner recited. Hence, the Office has not established a *prima facie* showing of obviousness.

**Claim 35**

Claim 35 depends from claim 33. Furthermore, neither Phillips nor NR discloses or suggests that the further input corresponds to at least one feature of the user and the further input device includes a biometric input device. Where does Phillips or NR teach or suggest a biometric input device? The record lacks substantial evidence support. *In re Zurko*, supra. The Office has not established a *prima facie* case of obviousness.

**Claim 36**

Claim 36 depends from claim 33/1. Furthermore, neither Phillips nor NR discloses or suggests that the further input corresponds to at least one feature of a vehicle operated by the user. The Action admits (at page 3, numbered paragraph 10) that neither of the references teaches or suggests that a further input corresponds to a feature of a vehicle. Thus, the record lacks substantial evidence support. *In re Zurko*, supra. Again, the Office has not established a *prima facie* showing of obviousness.

### **Claim 37**

Neither Phillips nor NR, taken alone or in combination, discloses or suggests dispensing the amount of cash from a cash dispensing device responsive to reading the machine readable article with an input device at the remote facility. Where does Phillips or NR disclose or suggest reading a machine readable article for paying for merchandise (step a) and reading the machine readable article at a remote facility for dispensing the requested cash? It would not have been obvious to have modified Phillips with the NR teachings to have produced the claimed invention.

### **Claim 40**

Appellant's remarks in support of the patentability of claims 1 and 38 are incorporated herein by reference. For reasons previously discussed, the references, taken alone or in combination, do not teach or suggest the recited features, relationships, and steps

Where do the references, taken alone or in combination, teach or suggest (all at a customer request station) receiving a request corresponding to an amount of cash, receiving a single payment for both merchandise and the amount of cash, and providing a code responsive to the cash request? Where do the references, taken alone or in combination, teach or suggest (all at a cash delivery station remote from the customer request station) delivering at least a portion of the requested cash from a cash dispensing device responsive to receiving input of the code at an input device at the cash delivery station? Where do the references teach or suggest requesting *cash* at one station and inputting a code at another station to receive the requested *cash*?

The Action (at page 3, numbered paragraph 7) alleges that the recited "code" is the name of the payee that is printed on a money order being bought in NR. The Appellant respectfully disagrees. Where does NR teach or suggest delivering a requested cash withdrawal (from a cash

dispensing device) responsive to receiving input of a payee name on a money order?

Furthermore, NR distinguishes a cash withdrawal transaction (from a cash dispenser 30) from a transaction involving a money order (col. 10, lines 3-8). Regardless, cash is requested and received at the same machine in NR. The references do not teach or suggest a customer request station remote from a cash delivery station.

Furthermore, Phillips specifically teaches having goods delivered *at* the fuel island of the fueling station, as previously discussed. That is, Phillips teaches away from having goods delivered at a station remote from the fueling station. An obviousness rejection cannot be based on a combination of features if making the combination would result in destroying the utility or advantage of the device shown in the prior art reference. Note *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1598-99 (Fed. Cir. 1988). Therefore, it would not have been obvious to have modified Phillips as alleged (in direct conflict with Phillips' teaching) to have produced Appellant's recited invention.

The attempts to modify Phillips are clearly an attempt at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible and does not constitute a valid basis for a finding of obviousness. *In re Fritch*, supra. The rejection, which lacks the necessary evidence and rationale, is based on knowledge gleaned only from Appellant's disclosure.

The references, taken alone or in combination, do not teach or suggest the recited features, relationships, and steps. The Office has not established a *prima facie* showing of obviousness.

### **Claim 41**

Claim 41 depends from claim 40. Neither Phillips nor NR, taken alone or in combination, disclose or suggest receiving a request for fuel in the manner recited. Nor would it have been obvious to one having ordinary skill in the art to have modified Phillips with the teachings of NR to have produced the claimed invention. The Office has not established a *prima facie* case of obviousness.

### **Claim 42**

Claim 42 depends from claim 40. Neither of the applied references, taken alone or in combination, disclose or suggest dispensing cash from a self-service automated cash dispensing device (remote from a customer request station) responsive to receiving input of the code at the cash dispensing device in the manner recited. Nor would it have been obvious to one having ordinary skill in the art to have modified Phillips with the teachings of NR to have produced the claimed invention.

### **Claim 43**

Claim 43 depends from claim 42/40. Neither Phillips nor NR, taken alone or in combination, disclose or suggest dispensing cash from an ATM responsive to receiving a code in the manner recited. Nor would it have been obvious to one having ordinary skill in the art to have modified Phillips with the teachings of NR to have produced the claimed invention.

Nor do the references link a fuel island to an ATM remote therefrom. It follows that the Office has not produced a *prima facie* case of obviousness.

## CONCLUSION

Each of Appellant's pending claims specifically recites features, relationships, and/or steps that are neither disclosed nor suggested in any of the applied prior art. Furthermore, the applied prior art is devoid of any teaching, suggestion, or motivation for combining features of the applied prior art so as to produce the recited invention. For these reasons it is respectfully submitted that all the pending claims are allowable.

Respectfully submitted,

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(viii)

## CLAIMS APPENDIX

1. A method comprising:
  - a) paying a charge for merchandise delivered to a user at a self-service dispensing machine, including reading a machine readable article, wherein the article corresponds to a source of monetary value;
  - b) receiving an input from the user through an input device adjacent the dispensing machine, wherein the input corresponds to a request for an amount of cash;
  - c) charging the source of monetary value for the charge and the amount;
  - d) communicating information representative of the request for the amount to a facility remote from the machine, wherein the facility includes a supply of cash; and
  - e) delivering the amount of cash to the user from the supply after the user arrives at the facility.

2. The method according to claim 1 and further comprising the steps of:
  - f) providing the user with other merchandise at the remote facility, the other merchandise having a cost; and
  - g) reducing the amount delivered to the user in step (e) by the cost associated with the other merchandise.
3. The method according to claim 1 and further comprising the steps of:
  - f) providing the user with other merchandise at the remote facility, the other merchandise having an associated cost; and
  - g) receiving payment of the cost from the user in cash at the remote facility.
4. The method according to claim 1 and further comprising the steps of:
  - f) providing the user with an item at the self-service dispensing machine responsive to the request for the amount; and
  - g) receiving the item from the user at the facility in exchange for the amount of cash.

5. The method according to claim 4 wherein step (f) includes printing the item with a printer adjacent the dispensing machine.
6. The method according to claim 4 wherein the item provided to the user in step (f) includes machine readable indicia having a corresponding relationship to the amount, and wherein step (g) includes reading the machine readable indicia with a reading device at the facility.
7. The method according to claim 6 wherein the reading device is operatively connected to a cash dispensing mechanism, and wherein the supply includes the cash dispensing mechanism and wherein step (e) includes dispensing the amount of cash from the cash dispensing mechanism responsive to reading the item with the reading device.
8. The method according to claim 7 wherein the supply includes another portion separate from the cash dispensing mechanism, and further comprising the step of loading cash from another portion of the supply to the cash dispensing mechanism.
9. The method according to claim 1 wherein step (d) includes providing a visual indication through an output device that the user has requested the amount.

10. The method according to claim 1 and prior to step (c) further comprising the step of storing a charge record in a data store associated with a computer, wherein the charge record includes data representative of a charge by the user to the source of monetary value of a total, wherein the total is equal to the charge and the amount.
11. The method according to claim 10 and further comprising the step of communicating data representative of the charge record to the source of monetary value through a communications network.
12. The method according to claim 1 wherein in step (a) the self-service dispensing machine includes a liquid dispenser and the merchandise includes a motor fuel.
13. The method according to claim 1 wherein the machine readable article includes a credit card.
14. The method according to claim 1 wherein the machine readable article includes a debit card.
15. The method according to claim 1 wherein the machine readable article includes a stored value card.

16. The method according to claim 15 wherein the stored value card includes a stored value memory thereon, and wherein step (c) includes modifying the data stored in the stored value memory.

17. The method according to claim 15 and further comprising the steps of:

(f) receiving a further input from the user through the input device, wherein the further input corresponds to a request to load data representative of a further amount of monetary value to the stored value card;

(g) charging the further amount to the source of the monetary value; and

(h) loading the data representative of the further amount to the stored value card.

18. The method according to claim 1 wherein step (d) includes delivering an item to the user at the self-service dispensing machine in response to the request for the amount, and the user delivering the item to the remote facility, wherein step (e) is performed responsive to the user delivering the item to the facility.

19. The method according to claim 18 wherein the item includes a printed document.
20. The method according to claim 1 wherein the self-service dispensing machine includes a card reader, and wherein the machine readable article includes a card, and wherein step (a) includes reading the card with the card reader, and wherein the machine includes a plurality of keys, wherein in step (b) the input corresponds to the user touching at least one of the keys.
21. The method according to claim 20 wherein the machine further comprises an output device, and further comprising the step of providing a prompt message through the output device advising the user to press at least one of the keys if they wish to receive an amount of cash.
22. The method according to claim 1 and prior to step (e) further comprising the step of reviewing identification indicia associated with the user at the facility.
23. The method according to claim 22 wherein step (e) comprises at least one of either reviewing the machine readable article, reviewing a driver's license associated with the user, or receiving a biometric input from the user.
24. The method according to claim 1 wherein the self-service dispensing machine is operative to deliver motor fuel in an outdoor environment, and wherein the facility includes an indoor sales area, wherein in step (e) the amount is delivered in the sales area.

25. The method according to claim 1 wherein the self-service dispensing machine is operative to deliver motor fuel, and wherein the facility includes a service window, wherein in step (e) the amount is delivered to the user through the service window.

26. The method according to claim 25 wherein the service window is a drive-up window, and prior to step (e) further comprising the step of moving a vehicle from adjacent the dispensing machine to adjacent the service window.

27. Apparatus operating to perform the method steps recited in claim 1.

28. The method according to claim 1 and further comprising the steps of:

(f) providing the user with machine readable indicia adjacent the self-service dispensing machine responsive to the request for the amount;

(g) reading the machine readable indicia with a reading device at the facility; and

wherein step (e) includes dispensing the amount of cash from a cash dispensing device responsive to reading the machine readable indicia with the reading device.

29. The method according to claim 28 wherein step (f) includes printing the machine readable indicia on a paper item.

30. The method according to claim 1 and further comprising the steps of:

(f) providing the user with a code at the self service dispensing machine responsive to the request for the amount;

(g) receiving input of the code through an input device at the facility; and

wherein step (e) includes dispensing the amount of cash from a cash dispensing device responsive to receiving input of the code through the input device.

31. The method according to claim 30 wherein step (f) includes printing the code on a paper item.

32. The method according to claim 30 wherein step (f) includes printing the code on a receipt.

33. The method according to claim 1 and further comprising the steps of:

(f) receiving a further input corresponding to the user through a further input device adjacent the self-service dispensing machine;

(g) correlating through operation of a computer, data corresponding to the further input and the amount;

(h) receiving the further input through a remote input device at the remote facility; and

wherein step (e) includes dispensing the amount of cash from a cash dispensing device responsive to receipt of the further input through the remote input device.

34. The method according to claim 33 wherein in step (f) the further input includes a user selected code.

35. The method according to claim 33 wherein in step (f) the further input corresponds to at least one feature of the user and the further input device includes a biometric input device.

36. The method according to claim 33 wherein in step (f) the further input corresponds to at least one feature of a vehicle operated by the user.

37. The method according to claim 1 and further comprising the step of:

reading the machine readable article with a further input device at the facility, and wherein step (e) includes dispensing the amount of cash from a cash dispensing device responsive to reading the machine readable article with the further input device.

38. A method comprising the steps of:

- a) paying for a first charge for merchandise delivered to a user at a first self-service dispensing machine, including accepting an amount of cash with a cash accepting device;
- b) generating a code, wherein the code corresponds to an amount of change, wherein the amount of change corresponds to the difference between the first charge and the amount of cash;
- c) outputting the code to the user; and
- d) paying for a second charge for merchandise delivered to the user at a second self-service dispensing machine, including inputting the code and reducing the second charge by the amount of change that corresponds to the code.

39. The method according to claim 38, wherein the outputting step further includes dispensing an item that includes indicia representative of the code, and wherein the second charge paying step further includes reading the indica from the item.

40. A method comprising:

receiving a first customer input request at a customer request station, wherein the first request is received via at least one input device at the customer request station, wherein the first request corresponds to a merchandise purchase;

receiving a second customer input request at the customer request station, wherein the second request is received via at least one input device at the customer request station, wherein the second request corresponds to an amount of cash;

providing a code at the customer request station, wherein the code is provided responsive to the second request;

receiving a single payment at the customer request station for both the merchandise and the amount of cash, wherein such payment receiving includes reading a machine readable article;

delivering at least a portion of the requested amount of cash from a cash dispensing device at a cash delivery station responsive to receiving input of the code at an input device at the cash delivery station, wherein the cash delivery station is remote from the customer request station, and wherein such cash delivery is subsequent to customer arrival at the cash delivery station.

41. The method according to claim 40, wherein the customer request station includes a self-service fuel dispensing machine, and wherein receiving the first customer input request includes receiving a request for fuel.
42. The method according to claim 40, wherein the cash delivery station includes a self-service automated cash dispensing device, wherein providing the code includes printing the code on a paper item, and wherein delivering the cash includes dispensing cash from the cash dispensing device responsive to receiving input of the code at the cash dispensing device.
43. The method according to claim 42, wherein the self-service automated cash dispensing device comprises an automated teller machine (ATM), and wherein the ATM includes a supply of cash.

**(ix)**

**EVIDENCE APPENDIX**

(None)

(x)

## **RELATED PROCEEDINGS APPENDIX**

Attached is a copy of the Board decision dated April 7, 2004 regarding Appeal No. 2003-0990, as identified in section (ii) of this Brief.

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

APR 07 2004

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte JEFFERY M. ENRIGHT

Appeal No. 2003-0990  
Application No. 09/439,718

ON BRIEF

Before KRASS, RUGGIERO and BLANKENSHIP, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-43.

The invention is directed to a cash dispensing method for a self-service facility such as a motor fuel dispensing facility.

Representative independent claim 38 is reproduced as follows:

38. A method comprising the steps of:

- a) paying for a first charge for merchandise delivered to a user at a first self-service dispensing machine, including accepting an amount of cash with a cash accepting device;
- b) generating a code, wherein the code corresponds to an amount of change, wherein the amount of change corresponds to the difference between the first charge and the amount of cash;
- c) outputting the code to the user; and
- d) paying for a second charge for merchandise delivered to the user at a second self service dispensing machine, including inputting the code and reducing the second charge by the amount of change that corresponds to the code.

The examiner relies on the following references:

Gatto	5,859,416	Jan. 12, 1999 (filed May 1, 1996)
Phillips et al. (Phillips)	6,193,154	Feb. 27, 2001 (filed Aug. 24, 1994)

Claims 38 and 39 stand rejected under 35 U.S.C. § 102(e) as anticipated by Phillips.

Claims 1-37 and 40-43 stand rejected under 35 U.S.C. § 103 as unpatentable over Phillips in view of Gatto.

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

An anticipatory reference is one which describes all of the elements of the claimed invention so as to have placed a person

of ordinary skill in the art in possession thereof. In re Spada, 911 F.2d 205, 15 USPQ2d 1655 (Fed. Cir. 1990).

It is the examiner's position that instant claims 38 and 39 are anticipated by Phillips because Phillips discloses, at column 27, lines 22-39, the acceptance of an amount of cash for merchandise and, at column 3, lines 13-22, the generation of a code for the amount of change, as well as the output of a code on a receipt and the payment of a second charge by inputting the code, at column 3, lines 41-42. With regard to claim 39, the examiner alleges that Phillips' receipt reads on indicia representative of the code.

Appellant argues that Phillips does not teach "generating a code" which corresponds to a difference between a merchandise charge and an amount of cash accepted, as claimed. In fact, appellant argues, there is no indication that Phillips' fuel dispenser permits accepting cash.

We will not sustain the rejection of claims 38 and 39 under 35 U.S.C. § 102(e) because Phillips does not appear to disclose each and every limitation of claims 38 and 39.

Phillips discloses a vending machine next to a fuel dispensing station so that the vending machine is usable in conjunction with a credit card accepting self-service fuel

dispensing gasoline pump. Thus, the fuel dispensing station will accept a credit card to pay for the fuel and, if desired, to pay for a soda from the vending machine, permitting a purchase from the vending machine without cash. As disclosed at column 6, lines 42-55, of Phillips, there is an option for the vending machine to accept coins and paper money. Moreover, as disclosed at column 3, lines 13-22, of Phillips, a code is created that is usable in the vending machine so that purchases in the vending machine are enabled via the same credit card transaction as is used in the self-service fuel dispensing pump.

However, the code generated in Phillips does not correspond to an amount of change, wherein the amount of change corresponds to the difference between the first charge and the amount of cash, as required by claim 38, because there is no "change" disclosed in Phillips. There does not seem to be any provision in Phillips, at all, for accepting cash at the fuel dispensing pump. Thus, if the user pays for a first charge, i.e., for an amount of fuel, at the first self-service dispensing machine, this first dispensing machine does not include "accepting an amount of cash with a cash accepting device," as claimed. While Phillips' second self-service dispensing machine, e.g., a soda machine, may accept cash, this is not the claimed "first" self-

service dispensing machine. If we call the soda machine in Phillips the "first" machine, since this may accept cash, this machine does not generate the claimed code. While the claimed code is not specifically recited as being generated by the first dispensing machine, it is clear from the order of steps in method claim 38 that payment is first charged at the first dispensing machine, a code is generated, wherein that code corresponds to an amount of change, wherein the amount of change corresponds to the difference between the first charge and the amount of cash (thus, the code generation is related to the first charge made at the first dispensing machine) and then that code is used in paying the second charge at the second dispensing machine. Since the code is not used in Phillips to pay for the charge at the fuel dispensing machine, the instant claimed subject matter is not met if the soda vending machine in Phillips is considered the claimed "first self-service dispensing machine." Moreover, if the fuel dispensing machine in Phillips is considered as the claimed "first self-service dispensing machine," and Phillips' soda vending machine is considered to be the claimed "second self-service dispensing machine," the claimed subject matter is still not met because Phillips "first" dispensing machine does not accept an amount of cash, as claimed. Further, the code in

Phillips does not correspond to an amount of change nor is there any disclosure of an amount of change corresponding to a difference between a first charge and the amount of cash.

In fact, at pages 6-7 of the answer, the examiner admits that Phillips does not teach the claim limitation of the code corresponding to a difference between a merchandise charge and an amount of cash accepted. But, even though the examiner apparently recognizes this difference, the examiner contends that while the specific example embodiment of Phillips does not teach this limitation, this teaching of a difference between a merchandise charge and an amount of cash accepted is "inherent" through Phillips teaching of options, in that one of the dispensing machines can optionally accept cash.

The examiner's reasoning is misplaced. For something to be "inherent," it must **necessarily** occur in the prior art. Even if there may be a possibility that Phillips could be construed to suggest such a "difference," inherency cannot be established by a mere possibility. The examiner has failed to show that the claimed "difference between the first charge and the amount of cash" must, of necessity, occur in Phillips. As such, the examiner may not rely on "inherency" as a basis for an anticipation rejection.

Appeal No. 2003-0990  
Application No. 09/439,718

The examiner also contends that since Phillips teaches that one of the dispensing machines may accept cash and that one of the dispensing machines can issue a receipt bearing a code that can be input to purchase from the other dispensing machine, one of ordinary skill in the art "would know that many people prefer not to use credit cards" and that, for these customers, the invention would be "advantageous if it took a ten dollar bill for the joint purchase" (answer, page 7).

The problem with this reasoning by the examiner is that it smacks of "obviousness." But, the rejection is under 35 U.S.C. § 102, not § 103. Therefore, since the rejection is based on anticipation, the examiner must show where each and every claimed element is taught in Phillips. It is not enough, under 35 U.S.C. § 102, that the skilled artisan would have, or might have, found it obvious to have the first dispensing machine that generates the code also accept cash.

We will not sustain the rejection of claims 38 and 39 under 35 U.S.C. § 102(e) because the examiner has failed to establish a prima facie case of anticipation.

Turning to claims 1-37 and 40-43, the examiner rejects these claims under 35 U.S.C. § 103 by relying on Phillips but bringing in Gatto to supply a teaching of a facility remote from the

machine (answer, page 3), of a second good being an amount of cash (answer-page 5) and of debit and stored value cards (answer, page 5). The examiner also relies on Official notice regarding claims 25, 26 and 36 relative to the feature of a facility including a service window and that a further input corresponds to a feature of the user's vehicle.

We will not sustain the rejection of claims 1-37 and 40-43 under 35 U.S.C. § 103 because the examiner has not established a prima facie case of obviousness.

Even if we disregard appellant's argument about neither reference suggesting a facility remote from the machine by finding that the soda machine on the same aisle as the fuel dispensing machine in Phillips is "remote" from the fuel dispensing machine (since being "remote" is relative, the soda machine, being separate from the fuel-dispensing machine, might be considered "remote" therefrom), neither reference discloses the delivery of an amount of cash to the user at the remote facility.

The soda machine in Phillips may accept cash, and may even dispense change to a user, but this is a far cry from a request for an amount of cash by a user via an input to a dispensing machine, communicating that information to a remote facility and

delivering the requested amount of cash after the user arrives at the facility, as set forth in independent claims 1 and 40.

The examiner points to Gatto's recitation of "pay inside" and "cash back" (column 1, line 30 and column 6, lines 25-26) for a suggestion of the amount of cash requested being delivered by a remote facility. The recitation of "pay-at-the-pump" or to pay inside, at column 1, line 30, of Gatto merely describes the conventional fuel dispensing pump wherein the user is requested to make a choice of paying at the pump, e.g., by credit card, or inside, e.g., going to the cashier after dispensing the desired amount of fuel. But we find no suggestion at this portion of Gatto for a user to specifically request an amount of cash by input to a dispensing machine, communicating that information to a remote facility and then delivering the cash at the facility. The user may visit the cashier in a remote facility, but this visit is for paying the amount due for the dispensed fuel and, possibly, for making a further purchase of an item at the remote facility. There is no suggestion within Gatto that the user may request an amount of cash and then have that cash delivered at the remote facility.

Since neither Phillips nor Gatto discloses or suggests this claimed feature of requesting an amount of cash by a user via an

Appeal No. 2003-0990  
Application No. 09/439,718

input to a dispensing machine, communicating that information to a remote facility and delivering the requested amount of cash after the user arrives at the facility, no prima facie case of obviousness is made out.

Accordingly, we will not sustain the rejection of claims 1-37 and 40-43 under 35 U.S.C. § 103 over the applied references.

Since we have not sustained the rejection of claims 38 and 39 under 35 U.S.C. § 102(e) or the rejection of claims 1-37 and 40-43 under 35 U.S.C. § 103, the decision of the examiner is reversed.

REVERSED

*Errol A. Krass*  
ERROL A. KRASS )  
Administrative Patent Judge )  
 )  
 )  
*Joseph F. Ruggiero*  
JOSEPH F. RUGGIERO ) BOARD OF PATENT  
Administrative Patent Judge ) APPEALS AND  
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EAK:clm

Appeal No. 2003-0990  
Application No. 09/439,718

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